

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DANIEL CLAY,

Plaintiff,

v.

**ORDER**

20-CV-07692 (PMH)

SERGEANT JOHN DOE, et al.,

Defendants.

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PHILIP M. HALPERN, United States District Judge:

On October 20, 2020, the Court issued an Order severing certain claims and defendants from this action and transferring them to the Northern District of New York, and as to the remaining claims in this District, directed the New York State Attorney General (“NYAG”) to identify the four John and Jane Doe defendants who Plaintiff alleges assaulted him at Downstate Correctional Facility. (Doc. 7). On December 4, 2020, the NYAG served and filed a letter advising that there may have been one sergeant and five correction officers connected with the alleged incident, and therefore the NYAG is unable to determine how many “Doe” defendants there are and which individuals Plaintiff intends to sue. (Doc. 9). Nevertheless, the NYAG provided the names and addresses of the six individuals it identified as possibly having been connected with the claims alleged in the Complaint. (*Id.*). The Court therefore provided Plaintiff with the opportunity to amend his complaint to name the John Doe defendants that he wishes to sue; indeed, the Court expressly provided Plaintiff with three opportunities to do so, prior to issuance of an Order to Show Cause why this case should not be dismissed under Federal Rule of Civil Procedure 41(b). (*See* Docs. 7, 11, 13, 14).

By letter dated September 24, 2021, the return date of the Order to Show Cause (Doc. 14), Plaintiff requested that the Court refrain from dismissing his case for want of prosecution (Doc.

15). Plaintiff did not submit an amended complaint or otherwise name the John Doe defendants he wishes to sue. In other words, Plaintiff continues to fail to comply with the Court's prior Orders. The Court will permit Plaintiff one additional opportunity to comply with the Court's Orders and prosecute this action.


Accordingly, Plaintiff is directed, if he be so advised, to file an Amended Complaint by November 8, 2021, naming the John Doe Defendants he wishes to sue. The Amended Complaint will replace, not supplement, the original Complaint. An amended complaint form that Plaintiff should complete is attached to this Order. Once Plaintiff has filed an Amended Complaint, the Court will screen it and, if necessary, issue an order directing the Clerk of Court to complete the USM-285 forms with the addresses for the named John Doe Defendants and deliver to the U.S. Marshals Service all documents necessary to effect service.

In the event Plaintiff fails to file an Amended Complaint naming the John Doe Defendants he wishes to sue, this action may be dismissed for failure to comply with the Court's orders and failure to prosecute this action.

The Clerk of Court is respectfully requested to update Plaintiff's address on the docket to reflect the address listed in his recent correspondence: Daniel Clay, DIN No. 99A0386, Fishkill Correctional Facility, 271 Matteawan Road, P.O. Box 1245, Beacon, New York 12508. The Clerk of Court is further requested to mail a copy of this Order and attached Amended Complaint form to Plaintiff.

Dated: White Plains, New York  
October 4, 2021

**SO ORDERED:**

  
\_\_\_\_\_  
Philip M. Halpern  
United States District Judge

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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Write the full name of each plaintiff.

-against-

\_\_\_\_ CV \_\_\_\_  
(Include case number if one has been assigned)

**AMENDED  
COMPLAINT**  
(Prisoner)

Do you want a jury trial?

☐ Yes ☐ No

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Write the full name of each defendant. If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section IV.

**NOTICE**

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

**I. LEGAL BASIS FOR CLAIM**

State below the federal legal basis for your claim, if known. This form is designed primarily for prisoners challenging the constitutionality of their conditions of confinement; those claims are often brought under 42 U.S.C. § 1983 (against state, county, or municipal defendants) or in a “*Bivens*” action (against federal defendants).

☐ Violation of my federal constitutional rights

☐ Other: \_\_\_\_\_

**II. PLAINTIFF INFORMATION**

Each plaintiff must provide the following information. Attach additional pages if necessary.

First Name	Middle Initial	Last Name
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State any other names (or different forms of your name) you have ever used, including any name you have used in previously filing a lawsuit.

Prisoner ID # (if you have previously been in another agency’s custody, please specify each agency and the ID number (such as your DIN or NYSID) under which you were held)

Current Place of Detention

Institutional Address

County, City	State	Zip Code
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**III. PRISONER STATUS**

Indicate below whether you are a prisoner or other confined person:

☐ Pretrial detainee

☐ Civilly committed detainee

☐ Immigration detainee

☐ Convicted and sentenced prisoner

☐ Other: \_\_\_\_\_

**IV. DEFENDANT INFORMATION**

To the best of your ability, provide the following information for each defendant. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are identical to those listed in the caption. Attach additional pages as necessary.

Defendant 1:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 2:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 3:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 4:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

## V. STATEMENT OF CLAIM

Place(s) of occurrence: \_\_\_\_\_

Date(s) of occurrence: \_\_\_\_\_

### FACTS:

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and how each defendant was personally involved in the alleged wrongful actions. Attach additional pages as necessary.

[illegible]

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**INJURIES:**

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

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**VI. RELIEF**

State briefly what money damages or other relief you want the court to order.

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**VII. PLAINTIFF'S CERTIFICATION AND WARNINGS**

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I understand that if I file three or more cases while I am a prisoner that are dismissed as frivolous, malicious, or for failure to state a claim, I may be denied *in forma pauperis* status in future cases.

I also understand that prisoners must exhaust administrative procedures before filing an action in federal court about prison conditions, 42 U.S.C. § 1997e(a), and that my case may be dismissed if I have not exhausted administrative remedies as required.

I agree to provide the Clerk's Office with any changes to my address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

Dated	Plaintiff's Signature
First Name	Middle Initial
	Last Name
Prison Address	
County, City	State
	Zip Code

Date on which I am delivering this complaint to prison authorities for mailing: \_\_\_\_\_